

**WSR 09-10-035**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Aging and Disability Services Administration)  
 [Filed April 30, 2009, 7:29 a.m., effective May 1, 2009]

Effective Date of Rule: May 1, 2009.

Purpose: The division of developmental disabilities is amending chapter 388-845 WAC, DDD home and community based waivers to add a fifth waiver, known as the children's intensive in-home behavioral supports (CIIBS). These rules are necessary to implement the CIIBS waiver and incorporate changes reflected in the waivers submitted to the federal Centers for Medicare and Medicaid Services under 1915 (c) of the Social Security Act and implement section 205 (1)(i), chapter 329, Laws of 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0001, 388-845-0015, 388-845-0020, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0050, 388-845-0055, 388-845-0065, 388-845-0100, 388-845-0111, 388-845-0120, 388-845-0200, 388-845-0500, 388-845-0505, 388-845-0900, 388-845-0910, 388-845-1000, 388-845-1015, 388-845-1110, 388-845-1150, 388-845-1200, 388-845-1300, 388-845-1400, 388-845-1600, 388-845-1605, 388-845-1620, 388-845-1650, 388-845-1700, 388-845-1800, 388-845-1900, 388-845-2000, 388-845-2005, 388-845-2100, 388-845-2200, 388-845-3000, 388-845-3085, and 388-845-4005.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120; chapter 194, Laws of 2009; and section 205 (1)(i), chapter 329, Laws of 2008.

Other Authority: Title 71A RCW.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: This emergency rule making is necessary to implement chapter 194, Laws of 2009, and the Centers for Medicare and Medicaid Services approval to begin the new HCBS waiver May 1, 2009. A CR-101 was filed as WSR 08-19-112 on September 17, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 18, Amended 38, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 18, Amended 38, Repealed 0.

Date Adopted: April 28, 2009.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-0001 Definitions.** "ADSA" means the aging and disability services administration, an administration within the department of social and health services.

"Aggregate services" means a combination of services subject to the dollar limitations in the Basic and Basic Plus waivers.

"CARE" means the comprehensive assessment and reporting evaluation.

"Client or person" means a person who has a developmental disability as defined in RCW 71A.10.020(3) and has been determined eligible to receive services by the division under chapter 71A.16 RCW.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration of the department of social and health services.

"DDD assessment" refers to the standardized assessment tool as defined in chapter 388-828 WAC, used by DDD to measure the support needs of persons with developmental disabilities.

"Department" means the department of social and health services.

"EPSDT" means early and periodic screening, diagnosis, and treatment, Medicaid's child health component providing a mandatory and comprehensive set of benefits and services for children up to age twenty one.

"Employment/day program services" means community access, person-to-person, prevocational services or supported employment services subject to the dollar limitations in the Basic and Basic Plus waivers.

"Evidence based treatment" means the use of physical, mental and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically-supported treatment (EST).

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse(-) or registered domestic partner; natural, adoptive or step parent((s)); grandparent((s)); (~~brother~~; sister; ~~stepbrother~~; ~~stepsister~~); child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your relatives live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"HCBS waivers" means home and community based services waivers.

"Home" means (~~your~~) present or intended place of residence.

"ICF/MR" means an intermediate care facility for the mentally retarded.

"Individual support plan (ISP)" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his/her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDD planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDD when the client does not have a legal guardian and the client is requesting or receiving DDD services.

~~("Plan of care (POC)" means the primary tool DDD uses to determine and document your needs and to identify services to meet those needs until the DDD assessment is administered and the individual support plan is developed.)~~

"Providers" means an individual or agency who meets the provider qualifications and is contracted with ADSA to provide services to you.

"Respite assessment" means an algorithm within the DDD assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the Basic, Basic Plus, Children's Intensive In-Home Behavioral Support, or Core waiver.

"SSI" means Supplemental Security Income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

~~"SSP" means ((state supplementary payment, a benefit administered by the department intended to augment an individual's SSI))~~ a state-paid cash assistance program for certain clients of the division of developmental disabilities.

"State funded services" means services that are funded entirely with state dollars.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0015 What HCBS waivers are provided by the division of developmental disabilities (DDD)?** DDD provides services through ~~((four))~~ five HCBS waivers:

- (1) Basic waiver;
- (2) Basic Plus waiver;
- (3) ~~((CORE))~~ Core waiver; ~~((and))~~
- (4) Community Protection waiver; and
- (5) Children's Intensive In-Home Behavioral Support waiver (CIIBS).

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-0020 When were ~~((these four))~~ the HCBS waivers effective?** ~~((The four DDD HCBS))~~ Basic, Basic Plus, Core and Community Protection waivers were

effective April 1, 2004. Children's Intensive In-Home Behavioral Support waiver was effective May 1, 2009.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services?** You meet criteria for DDD HCBS waiver-funded services if you meet all of the following:

- (1) You have been determined eligible for DDD services per RCW 71A.10.020(3).
- (2) You have been determined to meet ICF/MR level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.
- (3) You meet disability criteria established in the Social Security Act.
- (4) You meet financial eligibility requirements as defined in WAC 388-515-1510.
- (5) You choose to receive services in the community rather than in an ICF/MR facility.
- (6) You have a need for waiver services as identified in your plan of care or individual support plan.
- (7) You are not residing in hospital, jail, prison, nursing facility, ICF/MR, or other institution.

(8) Additionally, for the Children's Intensive In-Home Behavioral Support (CIIBS) waiver-funded services:

(a) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;

(b) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(c) You live with your family; and

(d) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0041 What is DDD's responsibility to provide my services under the DDD HCBS waivers administered by DDD?** If you are enrolled in an HCBS waiver administered by DDD, DDD must meet your assessed needs for health and welfare.

(1) DDD must address your assessed health and welfare needs in your ~~((plan of care or the))~~ individual support plan, as specified in WAC 388-845-3055.

(2) You have access to DDD paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.

(3) DDD will provide waiver services you need and qualify for within your waiver.

(4) DDD will not deny or limit your waiver services based on a lack of funding.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be**

**enrolled?** When there is capacity on a waiver and available funding for new waiver participants, DDD may enroll people from the statewide data base in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDD may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDD has determined to be in immediate risk of ICF/MR admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC ((388-845-0060(9))) 388-845-0060 (1)(i).

(3) For the Basic waiver only, DDD may consider persons who need the waiver services available in the Basic waiver to maintain them in their family's home or in their own home.

**AMENDATORY SECTION** (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0050 How do I request to be enrolled in a waiver?** (1) You can contact DDD and request to be enrolled in a waiver or to enroll in a different waiver at any time.

(2) If you are assessed as meeting ICF/MR level of care as defined in WAC 388-845-0070 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDD in a statewide data base.

(3) For the Children's Intensive In-Home Behavioral Support (CIIBS) waiver only, if you are assessed as meeting both ICF/MR level of care and CIIBS eligibility as defined in WAC 388-845-0030 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDD in a statewide database.

**AMENDATORY SECTION** (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0055 How do I remain eligible for the waiver?** Once you are enrolled in a DDD HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030(-), and:

(1) ((DDD)) You complete(s) a reassessment with DDD at least once every twelve months to determine if you continue to meet all of these eligibility requirements; and

(2) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 388-513-1320 (3)(b), or your health and welfare needs require

monthly monitoring, which will be documented in your client record; and

(3) ((~~Your~~)) You complete an in-person DDD assessment/reassessment interview ((~~must be~~)) administered ((~~in person and~~)) in your home((-See)) per WAC 388-828-1520.

(4) In addition, for the Children's Intensive In-Home Behavioral Supports waiver, you must:

(a) Be under age twenty-one;

(b) Live with your family; and

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

**AMENDATORY SECTION** (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-0065 What happens if I am terminated or choose to disenroll from a waiver?** If you are terminated from a waiver or choose to disenroll from a waiver, DDD will notify you.

(1) DDD cannot guarantee continuation of your current services, including medicaid eligibility.

(2) Your eligibility for nonwaiver state-only funded DDD services is based upon availability of funding and program eligibility for a particular service.

(3) If you are terminated from the CIIBS waiver due to turning age twenty-one, DDD will assist with transition planning at least twelve months prior to your twenty-first birthday.

**AMENDATORY SECTION** (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0100 What determines which waiver I am assigned to?** If there is capacity, DDD will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDD assessment as described in chapter 388-828 WAC and the following criteria:

(1) For the Basic waiver:

(a) You must live with your family or in your own home;

(b) Your family/caregiver's ability to continue caring for you can be maintained with the addition of services provided in the Basic waiver; and

(c) You do not need out-of-home residential services.

(2) For the Basic Plus waiver, your health and welfare needs exceed the amount allowed in the Basic waiver or require a service that is not contained in the Basic waiver; and

(a) You are at high risk of out-of-home placement or loss of your current living situation; or

(b) You require out-of-home placement and your health and welfare needs can be met in an adult family home or adult residential care facility.

(3) For the Core waiver:

(a) You are at immediate risk of out-of-home placement; and/or

(b) You have an identified health and welfare need for residential services that cannot be met by the Basic Plus waiver.

(4) For the Community Protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.

(5) For the Children's Intensive In-Home Behavioral Support waiver, you:

- (a) Are age eight or older and under age eighteen;
- (b) Live with your family;
- (c) Are assessed at high or severe risk of out of home placement due to challenging behavior per chapter 388-828 WAC; and
- (d) You have a signed participation agreement from your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0111 Are there limitations regarding who can provide services?** The following limitations apply to providers for waiver services:

- (1) Your spouse (~~cannot~~) **must not** be your paid provider for any waiver service.
- (2) If you are under age eighteen, your natural, step, or adoptive parent (~~cannot~~) **must not** be your paid provider for any waiver service.
- (3) If you are age eighteen or older, your natural, step, or adoptive parent (~~cannot~~) **must not** be your paid provider for any waiver service with the exception of:
  - (a) Personal care;
  - (b) Transportation to and from a waiver service;
  - (c) Residential habilitation services per WAC 388-845-1510 if your parent is certified as a residential agency per chapter 388-101 WAC; or
  - (d) Respite care if you and the parent who provides the respite care live in separate homes.
- (4) If you receive CIIBS waiver services, your legal representative or family member per WAC 388-845-0001 must not be your paid provider for any waiver service with the exception of:
  - (i) Personal care;
  - (ii) Transportation to and from a waiver service; and
  - (iii) Respite per WAC 388-845-1605 through 388-845-1620.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver?** Your participation in one of the (~~new~~) DDD HCBS waivers does not affect your continued receipt of state supplemental payment from DDD.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0200 What waiver services are available to me?** Each of the (~~four~~) DDD HCBS waivers has a different scope of service and your (~~plan of care or~~) individual support plan defines the waiver services available to you.

NEW SECTION

**WAC 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services.**

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> <li>• Behavior management and consultation</li> <li>• Staff/family consultation and training</li> <li>• Environmental accessibility adaptations</li> <li>• Occupational therapy</li> <li>• Physical therapy</li> <li>• Sexual deviancy evaluation</li> <li>• Nurse delegation</li> <li>• Specialized medical equipment/supplies</li> <li>• Specialized psychiatric services</li> <li>• Speech, hearing and language services</li> <li>• Transportation</li> <li>• Assistive technology</li> <li>• Therapeutic equipment and supplies</li> <li>• Specialized nutrition and clothing</li> <li>• Vehicle modifications</li> </ul>	Determined by the individual support plan. Total cost of waiver services cannot exceed the average cost of \$4,000 per month per participant.
	Personal care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.
	Respite care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.

NEW SECTION

**WAC 388-845-0415 What is assistive technology?** Assistive technology consists of items, equipment, or product systems used to increase, maintain, or improve functional

capabilities of waiver participants, as well as services to directly assist the participant and caregivers to select, acquire, and use the technology. Assistive technology is available in the CIIBS waiver, and includes the following:

(1) The evaluation of the needs of the waiver participant, including a functional evaluation of the child in the child's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

(3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for the participant and/or if appropriate, the child's family; and

(6) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

#### NEW SECTION

**WAC 388-845-0420 Who is a qualified provider of assistive technology?** The provider of assistive technology must be an assistive technology vendor contracted with DDD or one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

- (1) Occupational therapist;
- (2) Physical therapist;
- (3) Speech and language pathologist;
- (4) Certified music therapist;
- (5) Certified recreation therapist; or
- (6) Audiologist.

#### NEW SECTION

**WAC 388-845-0425 Are there limits to the assistive technology I can receive?** (1) Providers of assistive technology services must be certified, registered or licensed therapists as required by law and contracted with DDD for the therapy they are providing.

(2) Vendors of assistive technology must maintain a business license required by law and be contracted with DDD to provide this service.

(3) Assistive technology may be authorized as a waiver service only after you have accessed what is available to you under medicaid, including EPSDT, and any other private health insurance plan.

(4) The department does not pay for technology determined by DSHS to be experimental.

(5) The department and the treating professional determine the need for the technology.

(6) The department reserves the right to require a second opinion from a department-selected provider.

(7) The department will require evidence that you have accessed your full benefits through medicaid and private insurance before authorizing this waiver service.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-0500 What is behavior management and consultation?** (1) Behavior management and consultation may be provided to persons on any of the ~~((four))~~ DDD HCBS waivers and includes the development and implementation of programs designed to support waiver participants using:

(a) Strategies for effectively relating to caregivers and other people in the waiver participant's life; and

(b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, development and implementation of a positive behavior support plan).

(2) Behavior management and consultation may also be provided as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

#### NEW SECTION

**WAC 388-845-0501 What is included in behavior management and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?** (1) In addition to the definition in WAC 388-845-0500, behavior management and consultation in the CIIBS waiver must include the following characteristics:

(a) Treatment must be evidence based, driven by individual outcome data, and consistent with DDD's positive behavior support guidelines as outlined in contract;

(b) The following written components will be developed in partnership with the child and family by a behavior specialist as defined in WAC 388-845-0506:

(i) Functional behavioral assessment; and

(ii) Positive behavior support plan based on functional behavioral assessment.

(c) Treatment goals must be objective and measurable. The goals must relate to an increase in skill development and a resulting decrease in challenging behaviors that impede quality of life for the child and family; and

(d) Behavioral support strategies will be individualized and coordinated across all environments, such as home, school, and community, in order to promote a consistent approach among all involved persons.

(2) Behavior management and consultation in the CIIBS waiver may also include the following components:

(a) Positive behavior support plans may be implemented by a behavioral technician as defined in WAC 388-845-0506 and include 1:1 behavior interventions and skill development activity.

(b) Positive behavior support plans may include recommendations by a music and/or recreation therapist, as defined in WAC 388-845-0506.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-0505 Who is a qualified provider of behavior management and consultation? Under the Basic, Basic Plus, Core, and Community Protection waivers, the provider of behavior management and consultation must be one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:**

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) ~~((Registered counselor))~~ Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW; or
- (11) Polygrapher.

NEW SECTION

**WAC 388-845-0506 Who is a qualified provider of behavior management and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver? Under the CIIBS waiver, providers of behavior management and consultation must be contracted with DDD to provide CIIBS intensive services as one of the following four provider types:**

- (1) Behavior specialist;
- (2) Behavior technician;
- (3) Certified music therapist; and/or
- (4) Certified recreation therapist.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0900 What are environmental accessibility adaptations?** (1) Environmental accessibility adaptations are available in all of the DDD HCBS waivers and provide the physical adaptations to the home required by the individual's plan of care or individual support plan needed to:

- (a) Ensure the health, welfare and safety of the individual; or
- (b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.

(2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) For the CIIBS waiver only, adaptations include repairs to the home necessary due to property destruction caused by the participant's behavior.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0910 What limitations apply to environmental accessibility adaptations?** The following service limitations apply to environmental accessibility adaptations:

(1) Environmental accessibility adaptations require prior approval by the DDD regional administrator or designee.

(2) With the exception of damage repairs under the CIIBS waiver, environmental accessibility adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.

(3) Environmental accessibility adaptations cannot add to the total square footage of the home.

(4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

(5) Damage repairs under the CIIBS waiver are subject to the following restrictions:

(a) Limited to the cost of restoration to the original condition.

(b) Repairs to personal property and normal wear and tear is excluded.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1000 What are extended state plan services?** Extended state plan services refer to physical therapy; occupational therapy; and speech, hearing and language services available to you under medicaid without regard to your waiver status. They are "extended" services when the waiver pays for more services than is provided under the state medicaid plan. These services are available under all ~~((four))~~ DDD HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1015 Are there limits to the extended state plan services I can receive?** (1) Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under medicaid and any other private health insurance plan;

(2) The department does not pay for treatment determined by DSHS to be experimental;

(3) The department and the treating professional determine the need for and amount of service you can receive:

(a) The department reserves the right to require a second opinion from a department-selected provider.

(b) The department will require evidence that you have accessed your full benefits through medicaid, including early and periodic screening, diagnosis, and treatment (EPSDT) for children under the age of twenty-one, and private insurance before authorizing this waiver service.

(4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1110 What are the limits of mental health crisis diversion bed services?** (1) Mental health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) These services are available in ~~((all four HCBS))~~ the Basic, Basic Plus, Core, and Community Protection waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

(3) The costs of mental health crisis diversion bed services do not count toward the dollar limits for aggregate services in the Basic and Basic Plus waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1150 What are mental health stabilization services?** Mental health stabilization services assist persons who are experiencing a mental health crisis. These services are available in ~~((all four))~~ the Basic, Basic Plus, Core, and Community Protection waivers to adults determined by mental health professionals or DDD to be at risk of institutionalization in a psychiatric hospital without one of more of the following services:

- (1) Behavior management and consultation;
- (2) ~~((Skilled nursing services;~~
- ~~(3)))~~ Specialized psychiatric services; or
- ~~((4)))~~ (3) Mental health crisis diversion bed services.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

**WAC 388-845-1170 What is nurse delegation:** (1) Nurse delegation services (chapter 388-101 WAC) are services provided by a registered nurse or a nursing agency to provide training and nursing management for providers who perform delegated nursing tasks. Delegated tasks include administration of noninjectable medications, blood glucose testing, and tube feedings.

(2) Services include the initial visit, additional instruction and supervisory visits.

(3) Clients who receive nurse delegation services must be considered "stable and predictable" by the delegating nurse.

(4) Nurse delegation is available in the CIIBS waiver. This service is available through skilled nursing services (WAC 388-845-1700) in the Basic Plus, Core and Community Protection waivers.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

**WAC 388-845-1175 Who is a qualified provider of nurse delegation?** Providers of nurse delegation are registered nurses contracted with DDD to provide this service or employed by a nursing agency contracted with DDD to provide this service.

NEW SECTION

**WAC 388-845-1180 Are there limitations to the nurse delegation services that I receive?** The following limitations apply to receipt of nurse delegation services:

- (1) The department and the treating professional determine the need for and amount of service.
- (2) The department reserves the right to require a second opinion by a department selected provider.
- (3) The following tasks must not be delegated:
  - (a) Injections, other than insulin;
  - (b) Central lines;
  - (c) Sterile procedures; and
  - (d) Tasks that require nursing judgment.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-1200 What are "person-to-person" services?** (1) "Person-to-person" services are intended to assist you to achieve the outcome of gainful employment in an integrated setting through a combination of services, which may include:

- (a) Development and implementation of self-directed employment services;
- (b) Development of a person centered employment plan;
- (c) Preparation of an individualized budget; and
- (d) Support to work and volunteer in the community, and/or access the generic community resources needed to achieve integration and employment.

(2) These services may be provided in addition to community access, prevocational services, or supported employment.

(3) These services are available in ~~((all four HCBS))~~ the Basic, Basic Plus, Core and Community Protection waivers.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-1300 What are personal care services?** Personal care services as defined in WAC 388-106-0010 are the provision of assistance with personal care tasks. These services are available in the Basic, Basic Plus, CIIBS and ~~((CORE))~~ Core waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-1400 What are prevocational services?** (1) Prevocational services occur in a segregated set-

ting and are designed to prepare you for gainful employment in an integrated setting through training and skill development.

(2) Prevocational services are available in ~~((all four HCBS))~~ the Basic, Basic Plus, Core and Community Protection waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-1600 What is respite care?** Respite care is short-term intermittent relief for persons normally providing care for waiver individuals. This service is available in the Basic, Basic Plus, CIIBS, and ~~((CORE))~~ Core waivers.

AMENDATORY SECTION (Amending WSR 08-03-109, filed 1/22/08, effective 2/22/08)

**WAC 388-845-1605 Who is eligible to receive respite care?** You are eligible to receive respite care if you are in the Basic, Basic Plus, CIIBS or ~~((CORE))~~ Core waiver and:

(1) You live in a private home and no one living with you is paid to ~~((be your caregiver))~~ provide personal care services to you;

(2) You are age eighteen or older and live with a paid ~~((caregiver))~~ personal care provider who is your natural, step or adoptive parent; or

(3) You are under the age of eighteen and live with your natural, step or adoptive parent and your paid personal care provider also lives with you; or

(4) You live with a caregiver who is paid by DDD to provide ~~((care to you and is))~~ supports as:

- (a) A contracted companion home provider; or
- (b) A licensed children's foster home provider.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-1620 Are there limits to the respite care I can receive?** The following limitations apply to the respite care you can receive:

(1) The DDD assessment will determine how much respite you can receive per chapter 388-828 WAC.

(2) Prior approval by the DDD regional administrator or designee is required:

- (a) To exceed fourteen days of respite care per month; or
- (b) To pay for more than eight hours in a twenty-four hour period of time for respite care in any setting other than your home or place of residence. This limitation does not prohibit your respite care provider from taking you into the community, per WAC 388-845-1610(2).

(3) Respite cannot replace:

(a) Daycare while your parent or guardian is at work; and/or

(b) Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.

(4) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

(5) Your caregiver ~~((will not be paid to))~~ may not provide DDD services for you or other persons ~~((at the same time you receive respite services))~~ during your respite care hours.

(6) If your personal care provider is your parent, your parent provider will not be paid to provide respite services to any client in the same month that you receive respite services.

(7) DDD ~~((cannot))~~ may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(8) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-1650 What are sexual deviancy evaluations?** (1) Sexual deviancy evaluations:

(a) Are professional evaluations that assess the person's needs and the person's level of risk of sexual offending or sexual recidivism;

(b) Determine the need for psychological, medical or therapeutic services; and

(c) Provide treatment recommendations to mitigate any assessed risk.

(2) Sexual deviancy evaluations are available in all ~~((four))~~ DDD HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1700 What is skilled nursing?** (1) Skilled nursing is continuous, intermittent, or part time nursing services. These services are available in the Basic Plus, ~~((CORE))~~ Core, and Community Protection waivers.

(2) Services include nurse delegation services, per WAC 388-845-1170, provided by a registered nurse, including the initial visit, follow-up instruction, and/or supervisory visits.

~~((3) These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.))~~

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-1800 What are specialized medical equipment and supplies?** (1) Specialized medical equip-



ment and supplies are durable and nondurable medical equipment not available through medicaid or the state plan which enables individuals to:

(a) Increase their abilities to perform their activities of daily living; or

(b) Perceive, control or communicate with the environment in which they live.

(2) Durable and nondurable medical equipment are defined in WAC 388-543-1000 and 388-543-2800 respectively.

(3) Also included are items necessary for life support; and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) above.

(4) Specialized medical equipment and supplies are available in all (~~four~~) DDD HCBS waivers.

#### NEW SECTION

**WAC 388-845-1840 What is specialized nutrition and specialized clothing?** (1) Specialized nutrition is available to you in the CIIBS waiver and is defined as:

(a) Assessment, intervention, and monitoring services from a certified dietitian; and/or

(b) Specially prepared food, or purchase of particular types of food, needed to sustain you in the family home. Specialized nutrition is in addition to meals a parent would provide and specific to your medical condition or diagnosis.

(2) Specialized clothing is available to you in the CIIBS waiver and defined as nonrestrictive clothing adapted to the participant's individual needs and related to his/her disability. Specialized clothing can include weighted clothing, clothing designed for tactile defensiveness, specialized footwear, or reinforced clothing.

#### NEW SECTION

**WAC 388-845-1845 Who are qualified providers of specialized nutrition and specialized clothing?** (1) Providers of specialized nutrition are:

(a) Certified dietitians contracted with DDD to provide this service or employed by an agency contracted with DDD to provide this service; and

(b) Specialized nutrition vendors contracted with DDD to provide this service.

(2) Providers of specialized clothing are specialized clothing vendors contracted with DDD to provide this service.

#### NEW SECTION

**WAC 388-845-1850 Are there limitations to my receipt of specialized nutrition and specialized clothing?**

(1) The following limitations apply to your receipt of specialized nutrition services:

(a) Services may be authorized as a waiver service only after you have accessed what is available to you under medicaid, EPSDT, and any private health insurance plan;

(b) Services must be evidence based;

(c) Services must be ordered by a physician licensed to practice in the state of Washington;

(d) Specialized diets must be periodically monitored by a certified dietitian;

(e) Specialized nutrition products will not constitute a full nutritional regime unless an enteral diet is the primary source of nutrition;

(f) Department coverage of specialized nutrition products is limited to costs that are over and above inherent family food costs;

(g) DDD reserves the right to require a second opinion by a department selected provider; and

(h) Prior approval by regional administrator or designee is required.

(2) The following limitations apply to your receipt of specialized clothing:

(a) Services may be authorized as a waiver service only after you have accessed what is available to you under medicaid, EPSDT, and any private health insurance plan;

(b) Specialized clothing must be recommended by an appropriate health professional, such as an OT, behavior therapist, or podiatrist;

(c) DDD reserves the right to require a second opinion by a department-selected provider; and

(d) Prior approval by regional administrator or designee is required.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1900 What are specialized psychiatric services?** (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing mental health symptoms. These services are available in all (~~four~~) DDD HCBS waivers.

(2) Service may be any of the following:

(a) Psychiatric evaluation,

(b) Medication evaluation and monitoring,

(c) Psychiatric consultation.

(3) These services are also available as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-2000 What is staff/family consultation and training?** (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all (~~four~~) DDD HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's plan of care or individual support plan, including:

(a) Health and medication monitoring;

(b) Positioning and transfer;

(c) Basic and advanced instructional techniques;

(d) Positive behavior support; (~~and~~)

(e) Augmentative communication systems;

(f) Diet and nutritional guidance;

(g) Disability information and education;

(h) Strategies for effectively and therapeutically interacting with the participant;

(i) Environmental consultation; and

(j) For the CIIBS waiver only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training?** To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDD:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;

(14) (~~Registered counselor~~) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;

(15) Certified dietician; (~~or~~)

(16) Recreation therapist certified by the National Council for Therapeutic Recreation; or

(17) Providers listed in WAC 388-845-0506 and contracted with DDD to provide CIIBS intensive services.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-2100 What are supported employment services?** Supported employment services provide you with intensive ongoing support if you need individualized assistance to gain and/or maintain employment. These services are tailored to your individual needs, interests, abilities, and promote your career development. These services are provided in individual or group settings and are available in ((all four HCBS)) the Basic, Basic Plus, Core and Community Protection waivers.

(1) Individual supported employment services include activities needed to sustain minimum wage pay or higher. These services are conducted in integrated business environments and include the following:

- (a) Creation of work opportunities through job development;
- (b) On-the-job training;
- (c) Training for your supervisor and/or peer workers to enable them to serve as natural supports to you on the job;
- (d) Modification of your work site tasks;
- (e) Employment retention and follow along support; and
- (f) Development of career and promotional opportunities.

(2) Group supported employment services are a step on your pathway toward gainful employment in an integrated setting and include:

- (a) The activities outlined in individual supported employment services;
- (b) Daily supervision by a qualified employment provider; and
- (c) Groupings of no more than eight workers with disabilities.

#### NEW SECTION

**WAC 388-845-2160 What is therapeutic equipment and supplies?** (1) Therapeutic equipment and supplies are only available in the CIIBS waiver.

(2) Therapeutic equipment and supplies are equipment and supplies that are incorporated in a behavioral support plan or other therapeutic plan, designed by an appropriate professional, such as a sensory integration or communication therapy plan, and necessary in order to fully implement the therapy or intervention.

(3) Included are items such as a weighted blanket, supplies that assist to calm or redirect the child to a constructive activity, or a vestibular swing.

#### NEW SECTION

**WAC 388-845-2165 Who are qualified providers of therapeutic equipment and supplies?** Providers of therapeutic equipment and supplies are therapeutic equipment and supply vendors contracted with DDD to provide this service.

#### NEW SECTION

**WAC 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies?** The following limitations apply to your receipt of therapeutic equipment and supplies under the CIIBS waiver:

(1) Therapeutic equipment and supplies may be authorized as a waiver service only after you have accessed what is available to you under medicaid, EPSDT, and any private health insurance plan. The department will require evidence that you have accessed your full benefits through medicaid, EPSDT, and private insurance before authorizing this waiver service.

(2) The department does not pay for equipment and supplies determined by DSHS to be experimental.

(3) The department and the treating professional determine the need for the equipment and supplies.

(4) The department reserves the right to require a second opinion from a department selected provider.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-2200 What are transportation services?** Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver plan of care or individual support plan. This service is available in all ((four)) DDD HCBS waivers if the cost

and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides you access to waiver services, specified by your plan of care or individual support plan.

(2) Whenever possible, you must use family, neighbors, friends, or community agencies that can provide this service without charge.

#### NEW SECTION

##### **WAC 388-845-2260 What are vehicle modifications?**

This service is only available in the CIIBS waiver. Vehicle modifications are adaptations or alterations to a vehicle required in order to accommodate the unique needs of the individual, enable full integration into the community, and ensure the health, welfare, and safety of the individual and/or family members.

#### NEW SECTION

**WAC 388-845-2265 Who are providers of vehicle modifications?** Providers of vehicle modifications are:

(1) Vehicle service providers contracted with DDD to provide this service; or

(2) Vehicle adaptive equipment vendors contracted with DDD to provide this service.

#### NEW SECTION

**WAC 388-845-2270 Are there limitations to my receipt of vehicle modification services?** The following limitations apply to your receipt of vehicle modifications under the CIIBS waiver:

(1) Prior approval by the regional administrator or designee is required.

(2) Vehicle modifications are excluded if they are of general utility without direct medical or remedial benefit to the individual.

(3) Vehicle modifications must be the most cost effective modification based upon a comparison of contractor bids as determined by DDD.

(4) Modifications will only be approved for a vehicle that serves as the participant's primary means of transportation and is owned by the family.

(5) The department reserves the right to require a second opinion from a department selected provider.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-3000 What is the process for determining the services I need?** Your service needs are determined through the DDD assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the ISP.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) You meet the eligibility requirements for ICF/MR level of care.

(b) The "comprehensive assessment reporting evaluation (CARE)" tool will determine your eligibility and amount of personal care services.

(c) If you are in the Basic, Basic Plus, CIIBS, or ~~((CORE))~~ Core waiver, the DDD assessment will determine the amount of respite care available to you.

(2) From the assessment, DDD develops your waiver plan of care or individual support plan (ISP) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-3085 What if my needs exceed what can be provided under the CIIBS, ~~((CORE))~~ Core or Community Protection waiver?** (1) If you are on the CIIBS, ~~((CORE))~~ Core or Community Protection waiver and your assessed need for services exceeds the scope of services provided under your waiver, DDD will make the following efforts to meet your health and welfare needs:

(a) Identify more available natural supports;

(b) Initiate an exception to rule to access available non-waiver services not included in the CIIBS, ~~((CORE))~~ Core or Community Protection waiver other than natural supports;

(c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;

(d) Offer you placement in an ICF/MR.

(2) If none of the above options is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.

(3) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access to state-only funded DDD services is limited by availability of funding.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver?** (1) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide data base (~~((because))~~ due to the following:

(a) You do not need ICF/MR level of care per WAC 388-845-0070, 388-828-8040 and 388-828-8060; or

(b) You requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(2) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited to the following:

(a) DDD's decision that the services contained in a different waiver are not necessary to meet your health and welfare needs and that the services available on your current waiver can meet your health and welfare needs; or

(b) DDD's decision that you are not eligible to have your request documented in a statewide database because you

requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(3) If DDD determines that the services offered in a different waiver are necessary to meet your health and welfare needs, but there is not capacity on the different waiver, you do not have the right to appeal any denial of enrollment on a different waiver when DDD determines there is not capacity to enroll you on a different waiver.

**WSR 09-11-005**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-74—Filed May 6, 2009, 3:04 p.m., effective May 16, 2009]

Effective Date of Rule: May 16, 2009.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900U; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Washington department of fish and wildlife and Yakama Nation fishery managers are predicting a return of between 10,000 and 15,900 adult spring chinook to the Yakima River in 2009, of which 56% are predicted to be hatchery salmon originating from the Yakima/Klickitat Fisheries Project research hatchery at Cle Elum. The comanagers estimate that only 20% will be wild Naches River chinook, the weaker of the two nonhatchery stocks returning to the Yakima Basin, and not supplemented by hatchery production. Only 24% of the run is expected to be naturally produced upper Yakima River fish needed for Cle Elum Hatchery broodstock and natural spawning above Roza Dam. The more abundant hatchery component is available for harvest, while all wild or natural origin chinook need to be protected. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 6, 2009.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900U Exceptions to statewide rules—Yakima River.** (1) Notwithstanding the provisions of WAC 232-28-619, effective May 16 through June 30, 2009, a person may fish for salmon in waters of the Yakima River from the Interstate 82 bridge at Union Gap upstream to the Burlington Northern Railroad Bridge, approximately 500 feet downstream of Roza Dam.

(a) Daily limit of two hatchery salmon. Minimum size of 12 inches in length.

(b) Night closure in effect.

(c) One, single-pointed, barbless hook with a gap from point to shank of 3/4 inch or less is required for all species. Use of bait is allowed.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2009:

WAC 232-28-61900U      Exceptions to statewide  
rules—Yakima River.

**WSR 09-11-006**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-75—Filed May 6, 2009, 3:07 p.m., effective May 6, 2009, 3:07 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibition of all diving from licensed sea urchin harvest vessels prior to scheduled sea urchin openings discourages fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 6, 2009.

Philip Anderson  
Director

### NEW SECTION

**WAC 220-52-07300F Sea urchins.** Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 6 and 7 are open only on Monday through Friday of each week.

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on Monday through Friday of each week.

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel on Saturday and Sunday of each week, except by written permission from the Director.

### **WSR 09-11-007**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 09-77—Filed May 7, 2009, 11:35 a.m., effective May 11, 2009, 12:01 a.m.]

Effective Date of Rule: May 11, 2009, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-03000E; and amending WAC 220-52-030.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Based on historical catches and onsite inspection, there are adequate clams to support this commercial fishery. Biotxin levels currently fall below the regulatory threshold. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 7, 2009.

Philip Anderson  
Director

### NEW SECTION

**WAC 220-52-03000E Commercial razor clams.** Notwithstanding the provisions of WAC 220-52-030, effective 12:01 a.m. May 11, 2009 through 11:59 p.m. June 30, 2009, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 1, lying south of the Willapa Bay Ship Channel, west of Ellen Sands and north of the tip of Leadbetter point, and in those waters and attached beaches north of the line of boundary markers consisting of five fluorescent orange posts near the northern tip of Leadbetter Point. All other areas remain closed.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. July 1, 2009:

WAC 220-52-03000E Commercial razor clams.

### **WSR 09-11-022**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 09-71—Filed May 8, 2009, 2:44 p.m., effective May 15, 2009, 12:01 a.m.]

Effective Date of Rule: May 15, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900T; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule change is necessary to assure a safe and successful event. The fish will be planted one day prior to the event to better acclimate them before the event. Fish will be placed into netted areas along the shoreline of the pond. On the day of the event, preregistered kids will be allowed to fish within these netted areas. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 8, 2009.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900T Exceptions to statewide rules—Klineline Pond (Clark Co.)** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. May 15, 2009, through 4:59 p.m. May 16, 2009, it is unlawful to fish in those waters of Klineline Pond, except as provided in this section:

(a) Open to fishing 9:00 a.m. to 3:00 p.m. May 15, 2009, in the netted area, to juvenile anglers participating in the Fishing Kid's Event.

REPEALER

The following section of the Washington Administrative Code is repealed effective 5:00 p.m. May 16, 2009.

WAC 232-28-61900T Exceptions to statewide rules—Klineline Pond (Clark Co.)

**WSR 09-11-023  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-78—Filed May 8, 2009, 2:47 p.m., effective May 15, 2009, 12:01 a.m.]

Effective Date of Rule: May 15, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900W; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule change is necessary to assure a safe and successful event. The reason for closing the lake is to ensure safety for the public as well as the event participants. There is expected to be over six hundred people participating in the safety day program. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 8, 2009.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900W Exceptions to statewide rules—Kress Lake (Cowlitz Co.)** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. May 15 through 6:00 p.m. May 16, 2009, it is unlawful to fish in those waters of Kress Lake, except open to fishing 10:00 a.m. through 3:00 p.m. May 16, 2009 to juvenile anglers participating in the Safety Day Event.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. May 16, 2008:

WAC 232-28-61900W Exceptions to statewide rules—Kress Lake (Cowlitz Co.)

**WSR 09-11-024**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-76—Filed May 8, 2009, 3:48 p.m., effective May 8, 2009, 3:48 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900B; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The hatchery adult sport limit was previously reduced to one fish on the Kalama and Lewis rivers. To date only a few dozen hatchery adult spring chinook have entered the traps on the Lewis River and only two for the Kalama River. The hatchery brood stock goal is five hundred fish for the Kalama and one thousand two hundred fifty for the Lewis River. Based upon recent year return timing, the goal may not be met even with a reduced daily limit. The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 8, 2009.

Philip Anderson  
Director

**NEW SECTION**

**WAC 232-28-61900V Exceptions to statewide rules—2009 North of Falcon.** Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Cowlitz River (Cowlitz/Lewis Co.) from boundary markers at mouth to 400' below Mayfield Dam powerhouse: Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult Chinook. Release all salmon other than Chinook and hatchery coho. Release wild Chinook jacks.

(2) Deep River (Wahkiakum Co.) from mouth to town bridge: Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho and chum.

(3) Elochoman River (Wahkiakum Co.) from mouth to West Fork:

a) Salmon: Open first Saturday in June through July 31. Daily limit 6 hatchery Chinook. Up to 2 adults may be retained.

b) Salmon: Open August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, wild Chinook, and chum.

(4) Grays River (Wahkiakum Co.) from mouth to South Fork, and West Fork from mouth to hatchery intake/foot-bridge:

a) Salmon: Open first Saturday in June through July 31. Daily limit 6 hatchery Chinook. Up to 2 adults may be retained.

b) Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, unmarked Chinook, and chum. Unmarked Chinook are Chinook without either a clipped ventral fin or a clipped adipose fin.

(5) Green River (Cowlitz Co.) from mouth to 2800 Bridge: Salmon: Open August 1 until further notice. Daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, wild Chinook jacks, and chum.

(6) Kalama River (Cowlitz Co.), from boundary markers at mouth to 1,000 feet below fishway at upper salmon hatchery:

(a) Salmon: Closed May 11 through July 31, 2009.

(b) Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, wild Chinook, and chum.

(c) Electric motors are allowed on those waters upstream from the Modrow Bridge.

(7) Klickitat River (Klickitat Co.), from mouth to Fisher Hill Bridge, and from 400' upstream from #5 fishway to boundary markers below Klickitat Salmon Hatchery: Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult Chinook.

(8) Lewis River (Clark/Cowlitz Co.), from mouth to forks:

(a) Salmon: Closed May 11 through July 31, 2009.

(b) Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult hatchery Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

(9) Lewis River, North Fork (Clark/Cowlitz Co.) from mouth to Colvin Creek:

(a) Salmon: Closed May 11 through July 31, 2009.

(b) Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult

hatchery Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

(c) Fishing from any floating device permitted from Johnson Creek to Colvin Creek.

(10) Lewis River, North Fork (Clark/Cowlitz Co.) from Colvin Creek to overhead powerlines below Merwin Dam:

(a) Salmon: Closed May 11 through July 31, 2009.

(b) Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult hatchery Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

(c) Fishing from any floating device permitted from Colvin Creek upstream.

(11) Tilton River (Lewis Co.) from mouth to West Fork: Salmon: Open first Saturday in June through July 31. Minimum size 8 inches. Daily limit 6 fish, of which 2 may be adults. Release wild coho.

(12) Toutle River (Cowlitz Co.) from mouth to forks: Salmon: Open August 1 until further notice. Daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, wild Chinook jacks, and chum.

(13) Toutle River, North Fork (Cowlitz Co.) from mouth to posted deadline downstream of the fish collection facility: Salmon: Open August 1 until further notice. Daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, wild Chinook jacks, and chum.

(14) Washougal River (Clark Co.) from mouth to Salmon Falls Bridge: Salmon: Open August 1 until further notice. Daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, wild Chinook jacks, and chum.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900B Exceptions to statewide rules—Kalama and Lewis rivers. (09-24)

**WSR 09-11-026  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-80—Filed May 8, 2009, 4:56 p.m., effective May 11, 2009]

Effective Date of Rule: May 11, 2009.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Y; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Large numbers of hatchery spring chinook jacks have crossed Bonneville Dam. In addition, increasing numbers of jacks are appearing in the Wind River sport catches and have been found in Drano Lake creel surveys. Increasing the daily limit from the current two hatchery salmon or hatchery steelhead will provide additional opportunity to harvest those fish. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 8, 2009.

Philip Anderson  
Director

**NEW SECTION**

**WAC 232-28-61900Y Exceptions to statewide rules—Drano Lake and Wind River.** Notwithstanding the provisions of WAC 232-28-619:

(1) Drano Lake - Effective May 11 through June 30, 2009, a person may fish in waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of Hwy. 14 Bridge, except closed June 3 and June 10. Daily limit six fish, up to 2 may be hatchery adult salmon or hatchery steelhead or one of each. Release wild Chinook and wild steelhead. Release all trout other than steelhead. Minimum size 12 inches for salmon and 20 inches for steelhead.

(2) Wind River - Effective May 11 through June 30, 2009, a person may fish in waters from mouth (boundary line/markers) to 400 feet below Shipherd Falls and from 100 feet above Shipherd Falls to 400 feet below the coffer dam to 800 yards downstream of Carson National Fish Hatchery. Daily limit six fish, up to 2 may be hatchery adult salmon or hatchery steelhead or one of each. Release wild steelhead and all trout other than steelhead. Release wild Chinook downstream from Shipherd Falls. Minimum size 12 inches for salmon and 20 inches for steelhead.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective July 1, 2008:

WAC 232-28-61900Y Exceptions to statewide rules—Drano Lake and Wind River.



**WSR 09-11-028**  
**EMERGENCY RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed May 11, 2009, 11:20 a.m., effective May 11, 2009, 11:20 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amends WAC 181-78A-105 (3)(a)(iii)(B), technical change permitting educator preparation programs that add an approved program administrator program are not required to have a site visit until the next regularly scheduled[d] visit and still offer the program.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-105 (3)(a)(iii)(B).

Statutory Authority for Adoption: RCW 28A.410.210.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Newly authorized programs require site visit and approval but are being implemented such that site visit approval should be linked to the regularly required visits per WAC 181-78A-105.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 11, 2009.

David Brenna  
 Legislative and  
 Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-24-082, filed 12/5/06, effective 1/5/07)

**WAC 181-78A-105 Procedures for initial approval of an educator preparation program.** Each college or university desiring to establish a preparation program shall comply with the following:

(1) Advise the professional educator standards board of its desire to establish a preparation program.

(2) Develop with the assistance of the professional education advisory board and designated staff of the office of the superintendent of public instruction, a written preproposal plan which addresses all preproposal components adopted and published by the professional educator standards board and submit such plan to the designated official of the profes-

sional educator standards board for review and comment. Resubmit such plan to the designated official.

(3) Submit such plan to the professional educator standards board. The college or university may be granted approval for full proposal development or denied approval.

(a) If approved, the college or university shall comply with the following:

(i) Establish the appropriate professional education advisory board pursuant to WAC 181-78A-205;

(ii) Develop with assistance of the professional education advisory board and designated staff of the office of the superintendent of public instruction, a written plan which includes the following:

(A) Timelines for the implementation of all applicable program approval standards during the first year of the program;

(B) The criteria that the program will use to assess, in multiple ways over time, its candidates' knowledge and skills including evidence related to positive impact on student learning (WAC 181-78A-205(4)), provided that a college/university with an approved residency principal program which adds an approved program administrator program is not required to have a site visit of the program administrator program until the next regularly scheduled site visit of that institution;

(C) How the professional education advisory board was involved in program development, including a letter of support; and

(D) Letters of support from partnership districts and/or other agencies.

(ii) Present the written plan to the professional educator standards board.

(A) The program may be conditionally approved for up to a two-year period in a specific location(s). If not approved, the college or university may resubmit its revised plan or request a contested hearing via an appeal team appointed by the professional educator standards board.

(B) During the second year of approval, staff of the office of the superintendent of public instruction shall conduct a site visit and/or other forms of documentation to determine if the program is in full compliance with the 1997 program approval standards.

(b) If denied, the college or university may resubmit its plan based upon the suggestions of the professional educator standards board.

(4) Programs shall be approved for a specific location(s) identified in the written plan presented to the professional educator standards board. Institutions seeking to expand an existing program to a new location shall submit a request to the professional educator standards board which contains the following:

(a) A description of the location and facilities;

(b) Verification that no complaints have been filed against the program in its current location(s);

(c) A summary of the findings from the most recent site review, including how weaknesses, if any, have been addressed;

(d) A statement that supports need for the program;

(e) Cost to the students;

(f) Mode(s) of the program delivery; and

(g) Letters of support from program partners. The length of time for which the program approval status shall be granted shall coincide with the length of time for which the program in its current location(s) last received approval. The program review cycle for programs at all locations shall be the same.

**WSR 09-11-029**  
**EMERGENCY RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed May 11, 2009, 11:21 a.m., effective May 11, 2009, 11:21 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amends WAC 181-79A-250 (2)(a)(i), given current budget constraints, teachers who are unemployed or subject to reduction-in-force are granted an additional two-year renewal within nine years of the date of their last employment. Teachers at risk of having their two-year experience requirement expire due to unemployment are provided an option to renew one [once] they have returned to employment.

Citation of Existing Rules Affected by this Order: Amending WAC 181-79A-250 (2)(a)(i).

Statutory Authority for Adoption: RCW 28A.410.210.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Economic conditions create a potential hardship for teachers who have nearly attained length of service requirements but are interrupted by reduction-in-force unemployment and further diminishing educator workforce with appropriate qualifications in the future.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1[0], Amended [1], Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1[0], Amended [1], Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1[0], Amended [1], Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 11, 2009.

David Brenna  
Legislative and  
Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-15-141, filed 7/22/08, effective 8/22/08)

**WAC 181-79A-250 Initial/residency and continuing/professional certificates—Renewal, reinstatement, and continuing education requirements.** The following shall apply to initial/residency and continuing/professional certificates issued pursuant to this chapter:

(1) Initial certificate.

(a) Teachers.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all course work requirements from a regionally accredited institution of higher education as defined in WAC 181-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 181-79A-123 will apply.

(b) Administrators.

After June 30, 2004, provisions of WAC 181-79A-123(8) will apply.

(c) Educational staff associates.

After June 30, 2005, provisions of WAC 181-79A-123(9) will apply.

(2) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate administrator that the candidate is enrolled in a state approved professional certificate program. Provided, that individuals who are unable to complete the professional certificate program by the expiration date on the two-year renewal who have not taught for any portion of the nine years between employment and expiration date of the renewal can obtain an additional two-year renewal upon verification they had been unemployed during those years, been on a leave of absence or were unemployed due to a reduction in force.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work (normally one hundred level or higher) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(iii) An individual who completes a national board certification assessment but does not earn national board certification, may use that completed assessment to renew the residency certificate for two years.

(iv) Individuals who complete the requirements in their school district professional growth plan may use that completed plan to maintain the continuing certificate or renew the professional certificate.

(b) Principals/program administrators.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program under WAC 181-78A-535 (2)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(c) School counselors, school psychologists, or school social workers.

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, a residency certificate who do not qualify for admission to a professional certificate program under WAC 181-78A-535 (3)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal for an additional five-year period requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) completed since the issuance of the most recent residency certificate plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

~~((d) Renewals based on conditions other than those described in WAC 181-79A-250 (2)(a) and (b) may be appealed to the professional educator standards board, or its designated appeals committee. The following conditions apply to such appeals:~~

~~(i) Individuals who appeal shall present a rationale and evidence to support their request to have their residency certificates renewed.~~

~~(ii) The professional educator standards board, or its designated appeals committee, in making its decision shall determine the length of the renewal and may establish specific conditions (such as course work requirements) as prerequisites for the reissuance of the residency certificate.)~~

(3) Continuing certificate.

(a) The continuing certificates of holders who were eligible for such certificates prior to August 31, 1987, and who applied for such certificates prior to July 1, 1988, or who would have been eligible for such certificates prior to August 31, 1987, but for one of the three-year experience requirement and who complete such requirement and apply for such certificate prior to August 31, 1988, will be valid for life. Holders of valid continuing certificates affected by this subsection shall be entitled to have such certificate reissued and subject to the terms and conditions applicable to certification at the time of reissuance including the continuing education requirements of chapter 181-85 WAC.

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall lapse if the holder does not complete the continuing education requirement, to include the filing requirement specified in chapter 181-85 WAC. To reinstate such a lapsed continuing certificate the individual must complete the requirements for reinstatement stated within chapter 181-85 WAC and must meet the conditions stated in WAC 181-79A-253.

(4) Professional certificate.

(a) Teachers.

(i) A valid professional certificate may be renewed for additional five year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued. An expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection: Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards outlined in WAC 181-78A-540:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in RCW 28A.415.023.

(I) Is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.320.205, the annual school performance report, for the school in which the individual is assigned;

(II) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

(III) Is necessary to obtain an endorsement as prescribed by the professional educator standards board;

(IV) Is specifically required to obtain advanced levels of certification; or

(V) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff.

(ii) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) Principals/program administrators.

(i) A professional certificate may be renewed for additional five year periods for individuals employed as a principal, assistant principal or program administrator in a public school or state board of education-approved private school by:

(A) Completion of a professional growth plan that is developed and approved with the superintendent, superintendent designee, or appointed representative (e.g., educational service district personnel, professional association or organization staff, or peer from another district), and that documents formalized learning opportunities and professional development activities that:

(I) Emphasize continuous learning;

(II) Positively impact student learning;

(III) Relate to the six standards and "career level" benchmarks defined in WAC 181-78A-270 (2)(b);

(IV) Explicitly connect to the evaluation process;

(V) Reflect contributions to the school, district, and greater professional community; and

(VI) Identify areas in which knowledge and skills need to be enhanced.

(B) Documented evidence of results of the professional growth plan on student learning.

(ii) Individuals not employed as a principal, assistant principal, or program administrator in a public school or state board of education-approved private school may have their professional certificate renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the professional certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved professional certificate program, and taken since the issuance of the last professional certificate.

(c) School counselors, school psychologists, or school social workers.

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a school counselor, school psychologist, or school social worker in a public school, state board of education-approved private school, or in a state agency which provides educational services to students by:

(A) Completion of a professional growth plan that is developed and approved with the principal or principal designee, and that documents formalized learning opportunities and professional development activities that:

(I) Emphasize continuous learning;

(II) Positively impact student learning; and

(III) Reflect contributions to the school, district, and greater professional community; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9).

(ii) Individuals not employed as a school counselor, school psychologist, or a school social worker in a public school or state board of education-approved private school may have their professional certificate renewed for an additional five-year period by:

(A) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9); or

(C) Provided that, a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the national board certificate, whichever is greater.

**WSR 09-11-043**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-79—Filed May 12, 2009, 11:53 a.m., effective May 13, 2009]

Effective Date of Rule: May 13, 2009.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900U and 232-28-61900X; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Washington department of fish and wildlife and Yakama Nation fishery managers are predicting a return of between 10,000 and 15,900 adult spring

chinook to the Yakima River in 2009, of which 56% are predicted to be hatchery salmon originating from the Yakima/Klickitat fisheries project research hatchery at Cle Elum. The comanagers estimate that only 20% will be wild Naches River chinook, the weaker of the two nonhatchery stocks returning to the Yakima Basin, and not supplemented by hatchery production. Only 24% of the run is expected to be naturally produced upper Yakima River fish needed for Cle Elum Hatchery broodstock and natural spawning above Roza Dam. The more abundant hatchery component is available for harvest, while all wild or natural origin chinook need to be protected. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 12, 2009.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900X Exceptions to statewide rules—Yakima River.** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective May 16 through June 30, 2009, a person may fish for salmon in waters of the Yakima River from the Interstate 82 bridge at Union Gap upstream to the Burlington Northern Railroad Bridge, approximately 500 feet downstream of Roza Dam.

(a) Daily limit of two hatchery salmon. Minimum size of 12 inches in length.

(b) Night closure in effect.

(c) One, single-pointed, barbless hook with a gap from point to shank of 3/4-inch or less is required for all species. Use of bait is allowed.

(2) Effective May 13 through June 15, 2009, a person may fish for salmon in waters of the Yakima River from the Interstate 182 bridge in Richland to 400 feet downstream of Horn Rapids (Wanawish) Dam.

(a) Daily limit of two hatchery salmon. Minimum size of 12 inches in length.

(b) One, single-pointed, barbless hook with a gap from point to shank of 3/4-inch or less is required for salmon only. Use of bait is allowed.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900U Exceptions to statewide rules—Yakima River. (09-74)

The following section of the Washington Administrative Code is repealed effective July 1, 2009:

WAC 232-28-61900X Exceptions to statewide rules—Yakima River.

#### **WSR 09-11-045**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF FISH AND WILDLIFE**

[Order 09-81—Filed May 12, 2009, 3:32 p.m., effective May 12, 2009, 3:32 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500L; and amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. The state recreational harvest share of spot shrimp has been taken in Marine Area 8, will be taken by 9:00 p.m. on May 15, 2009, in the northern portion of Marine Area 7, and will be taken by 9:00 p.m. on May 16, 2009, in the remainder of Marine Area 7. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 12, 2009.

Philip Anderson  
Director

#### NEW SECTION

##### **WAC 220-56-32500M Shrimp—Areas and seasons.**

Notwithstanding the provisions of WAC 220-56-325:

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 8, 9, 10, 11 and the Discovery Bay Shrimp District.

2) Effective 9:00 p.m., May 15, 2009 until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7 except as provided for in this section:

a. All waters of Marine Area 7 south of a line from the Initiative 77 marker on Fidalgo Island to Point Colville on Lopez Island, then south of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then south of a line due west from Lime Kiln Point light to the international boundary, are open to the harvest of all shrimp species until 9:00 p.m. May 16, 2009.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-32500L Shrimp—Areas and seasons  
(09-73)

**WSR 09-11-055**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-82—Filed May 13, 2009, 3:19 p.m., effective May 13, 2009, 3:19 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife com-

mission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect. In addition, the opening of the steelhead fishery in the area from the Rocky Point/Tongue Point line upstream to the I-5 Bridge is delayed until June 1, to protect ESA-listed spring chinook returning from a smaller than predicted run size. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 13, 2009.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900Z Exceptions to statewide rules—2009 North of Falcon.** Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

##### **Columbia River**

1. From a true north and south line through Buoy 10 to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank: Effective August 1 until further notice, release all salmon other than Chinook and hatchery coho. Only one Chinook may be retained.

2. From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at

Tongue Point on the Oregon bank, to the I-5 Bridge: Effective May 16 through June 15, all salmon and steelhead must be released. Effective June 16 through July 31, release all salmon other than Chinook and sockeye. Effective June 16 through June 21, and July 6 through July 31, release adult Chinook. Effective August 1 until further notice, release all salmon other than Chinook and hatchery coho. Only one may be an adult Chinook.

3. From the I-5 Bridge to Bonneville Dam: Effective June 16 through July 31, release all salmon other than Chinook and sockeye. Effective June 16 through June 21, and July 6 through July 31, release adult Chinook. Effective August 1 until further notice, release all salmon other than Chinook and hatchery coho. Only one may be an adult Chinook.

4. From Bonneville Dam to the Highway 395 Bridge at Pasco: Effective June 16 through July 31, release all salmon other than Chinook and sockeye. Effective June 16 through June 30, release adult Chinook. Effective August 1 until further notice, release all salmon other than Chinook and coho. Release wild coho from Bonneville Dam to Hood River Bridge.

5. From the Highway 395 Bridge at Pasco to Priest Rapids Dam: Effective July 1 until further notice, the salmon daily limit is 6 fish, of which no more than 2 may be adults. Release sockeye.

### WSR 09-11-056

#### EMERGENCY RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 09-83—Filed May 13, 2009, 3:21 p.m., effective May 17, 2009]

Effective Date of Rule: May 17, 2009.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900M and 232-28-61900A; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The upriver spring chinook run is expected to return at about half of the preseason forecast. Because the wild portion of the run is protected under ESA, fisheries must be managed to remain within the guidelines of the ESA. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 13, 2009.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900A Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 232-28-619, effective one hour after official sunset on May 17, through May 31, 2009, it is unlawful to fish for salmon in those waters of the Columbia River adjacent to Ringold Springs Rearing Facility (in Franklin County), from the Washington Department of Fish and Wildlife markers 1/4 mile downstream of the Ringold irrigation wasteway outlet, to the markers 1/2 mile upstream of Ringold Springs Creek.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective May 17, 2009 one hour after official sunset:

WAC 232-28-61900M	Exceptions to statewide rules—Columbia River. (09-54)
-------------------	---

The following section of the Washington Administrative Code is repealed effective June 1, 2009:

WAC 232-28-61900A	Exceptions to statewide rules—Columbia River.
-------------------	---

**WSR 09-11-061**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-86—Filed May 14, 2009, 12:56 p.m., effective May 18, 2009]

Effective Date of Rule: May 18, 2009.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 232-28-61900C; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The upriver spring chinook run is expected to return at about half of the preseason forecast. Because the wild portion of the run is protected under the Endangered Species Act (ESA), fisheries must be managed to remain within the guidelines of the ESA. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 14, 2009.

Philip Anderson  
 Director

NEW SECTION

**WAC 232-28-61900C Exceptions to statewide rules—Snake River.** Notwithstanding the provisions of WAC 232-28-619, effective May 18 through June 15, 2009, it is unlawful to fish for salmon in waters of the Snake River from Texas Rapids Boat Launch upstream to the U.S. Army Corps of Engineers Boat Launch.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 16, 2009:

WAC 232-28-61900C	Exceptions to statewide rules—Snake River.
-------------------	--

**WSR 09-11-062**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-84—Filed May 14, 2009, 1:05 p.m., effective May 17, 2009, 7:00 p.m.]

Effective Date of Rule: May 17, 2009, 7:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-33-01000D; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.



Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Sets the spring season commercial fisheries for the select areas. These areas are terminal areas and have minimal impact to ESA listed chinook. The fishery is consistent with the *U.S. v. Oregon Management Agreement* and the associated biological opinion. Conforms Washington state rules with Oregon state rules, consistent with the compact action taken on May 13, 2009. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 14, 2009.

Philip Anderson  
Director

## NEW SECTION

**WAC 220-33-01000D Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed:

### **1. Blind Slough Select Area**

a) Area: Only Blind Slough area open through May 28, and both Blind Slough and Knappa Slough areas open thereafter (see dates below). The lower boundary of the Knappa Slough fishing area is defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore (fall boundary).

Dates: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from May 18 through June 12, 2009.

b) Gear: 8-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

c) Allowable sales: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

d) A 24-hour quick reporting rule is in effect for Washington buyers.

### **2. Deep River Select Area**

a) Area: From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

b) Dates: 7:00 p.m. Sundays to 7:00 a.m. Mondays and 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays, from May 17 through June 11, 2009.

c) Gear: Nets are restricted to a maximum length of 100 fathoms with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to any stationary structures. Nets may not fully cross the navigation channel. 8-inch maximum mesh.

d) Allowable sale: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff.

f) A 24-hour quick reporting rule is in effect for Washington buyers.

## REPEALER

The following section of the Washington Administrative Code is repealed effective June 13, 2009:

WAC 220-33-01000D Columbia River seasons below Bonneville.

## **WSR 09-11-071**

### **EMERGENCY RULES**

### **DEPARTMENT OF LICENSING**

[Filed May 15, 2009, 8:13 a.m., effective May 15, 2009, 8:13 a.m.]

Effective Date of Rule: Immediately.

Purpose: Rule making is required to comply with SHB 3029 that was passed by the legislature in 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-420.

Statutory Authority for Adoption: RCW 46.01.110.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Comply with the law.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: May 15, 2009.

Mykel D. Gable  
Assistant Director  
Driver and Vehicle Services

AMENDATORY SECTION (Amending WSR 05-14-092, filed 6/30/05, effective 7/31/05)

**WAC 308-56A-420 Delivery of vehicle on dealer temporary permit. How do I deliver a vehicle ~~((on))~~ using a dealer temporary permit?**

(1) A vehicle dealer properly licensed pursuant to chapter 46.70 RCW may deliver a vehicle not currently registered or that does not bear valid Washington state license plates or tabs by utilizing ~~((a))~~ an electronic dealer temporary permit or a hard copy dealer temporary ((license)) permit.

Note: Effective July 1, 2011, an electronic dealer permit (e-permit) will replace a hard copy dealer permit. A hard copy dealer temporary permit will only be issued after July 1, 2011, in the instance of "system issues" and an electronic permit cannot be issued.

(2) The application for title portion of the permit form must be properly and completely filled out by the selling/leasing dealer, including the dealer's report of sale and the date on which the vehicle is physically delivered to the ~~((customer/))~~ purchaser/lessee. If license based on gross weight is required, the amount of gross weight purchased must be clearly shown. The application must be signed by the registered owner(s) or lessee.

(3) The dealer shall collect all fees required for titling and registration of a vehicle.

(4)(a) For e-permit, the permit printed by the system must display the expiration date and e-permit number. The expiration date is forty-five days from the date of delivery of the vehicle.

(b) For hard copy permits, the dealer ((shall)) must detach the hard copy of the dealer permit and ((shall)) must record the date of expiration in dark, bold letters and numbers on the permit side of that copy. Date of expiration ((will be)) is forty-five calendar days ((after)) from the date ((on which)) the vehicle is physically delivered to the ((customer/)) purchaser/lessee.

(5) The application copies ~~((shall))~~ must be used by the dealer to apply for title and to complete licensing of the vehicle. Except as provided in RCW 46.70.180(8), when a second temporary permit is authorized; the selling dealer must submit the application and all title/licensing fees to the department of licensing or an authorized licensing agent within forty-five calendar days from the date ~~((on which))~~ the vehicle is physically delivered to the ~~((customer/))~~ purchaser/lessee. The date ~~((on which))~~ that the selling or leasing dealer physically delivers the vehicle to the ~~((customer/))~~ purchaser/lessee ~~((shall commence))~~ will start the forty-five day interval ~~((in which))~~ that the selling or leasing dealer must make an application for a certificate of title in the purchaser's or lessee's name. Additionally, the director may excuse late applications only in situations where applications are delayed, for reasons beyond the control of the dealer.

(6) The electronic or hard copy ((of the)) dealer temporary permit, temporary vehicle registration, and a purchase order identifying the vehicle and the date ~~((on which))~~ that the vehicle was physically delivered to the ~~((customer/))~~ purchaser/lessee must be carried in the vehicle or the towing vehicle at all times the vehicle is operated on the temporary permit.

(7) The electronic or hard copy ((of the)) dealer temporary ((license)) permit ((shall)) must be displayed on the inside of the rear window in the lower left corner, or enclosed in a moisture proof protective case securely attached in the rear license plate holder, with the expiration date visible to one standing or following at the rear of the vehicle.

(8) The electronic or hard copy dealer temporary ~~((license))~~ permit is valid for not more than forty-five calendar days ~~((commencing))~~ starting with the date ~~((on which))~~ that the vehicle is physically delivered to the ~~((customer/))~~ purchaser/lessee.

(9) The electronic or hard copy dealer temporary ~~((license))~~ permit ~~((shall))~~ will not:

- (a) Be issued for a dealer inventoried or a dealer or dealer-employee operated vehicle;
- (b) Be issued as a demonstration permit;
- (c) Be issued for a vehicle processed as a courtesy delivery.

(10) Fees paid for an electronic or hard copy dealer temporary ~~((license))~~ permit application forms are not refundable unless the dealer ceases doing business as a vehicle dealer. A credit, in the amount of the permit ~~((form))~~ fee, will be provided when the permit is used by the vehicle dealer to make application for a vehicle title.

(11) The dealer ~~((shall))~~ must maintain a record of each dealer temporary permit ~~((form))~~ acquisition and distribution including the following:

- (a) Date and location of purchase of each permit and the permit number;
- (b) Identification of vehicles delivered on temporary permits;
- (c) Dates of vehicle sales, leases and deliveries.

**WSR 09-11-073**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-88—Filed May 15, 2009, 11:37 p.m., effective May 16, 2009,  
6:00 a.m.]

Effective Date of Rule: May 16, 2009, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Allows the sale of fish caught by treaty Indians in the mainstem Columbia River using traditional ceremonial and subsistence gear (platform and hook and line fisheries). Also allows sale of fish caught in tributary fisheries and the area immediately below Bonneville Dam (see next paragraph) by enrolled Yakama Nation tribal members when the mainstem above Bonneville Dam is open for commercial sales. Impact limits to ESA listed chinook remain available for treaty Indian fisheries. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on May 14, 2009. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

New regulations for 2009 include fisheries that are described in the MOA between Washington state and Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes).

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 15, 2009.

Philip Anderson  
Director

NEW SECTION

**WAC 220-32-05100M Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, walleye or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, (except as provided in the following subsections) and the Wind River, White Salmon River, Klickitat River, and Drano Lake, except that individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, shad, carp, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

**1. Mainstem Columbia River above Bonneville Dam**

a) SEASON: 6:00 a.m. Saturday May 16, 2009 until further notice.

b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

### 2. Columbia River Tributaries above Bonneville Dam

a) SEASON: 6:00 a.m. Saturday May 16, 2009 until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: Drano Lake, White Salmon, and Klickitat and Wind rivers.

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Only gill nets may be used in Drano Lake (no mesh restriction, 150-foot length restriction).

### 3. Mainstem Columbia River below Bonneville Dam

a) SEASON: 6:00 a.m. Saturday May 16, 2009 until further notice, and only under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam." and only for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: (SMCRA) 1E On the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only).

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with Yakama Nation regulations.

4. SANCTUARIES: Standard river mouth and dam sanctuaries applicable to these gear types, except the Spring Creek Hatchery sanctuary not in effect.

5. ALLOWABLE SALES: Chinook, coho, sockeye, steelhead, walleye, shad, and carp. Sturgeon may not be sold. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence. Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale. Sturgeon below Bonneville Dam may NOT be retained and may NOT be sold.

6. ADDITIONAL REGULATIONS: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

**WSR 09-11-075**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-89—Filed May 15, 2009, 1:35 p.m., effective May 16, 2009, 6:00 a.m.]

Effective Date of Rule: May 16, 2009, 6:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100L; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The 2009 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and North Puget Sound require adoption of harvest seasons and the prohibition on night-time fishing contained in this emergency rule. This emergency rule opens the beam trawl fishery season in the remainder of Catch Area 22A within Shrimp Management Area 1B. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 15, 2009.

Philip Anderson  
Director

### NEW SECTION

**WAC 220-52-05100M Puget Sound shrimp pot and beam trawl fishery—Season.** Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Marine Fish-Shellfish Management and Catch Reporting Area 29 are open to harvest of all shrimp species effective immediately, until further notice.

(b) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3, 4, and 6 outside the Discovery Bay Shrimp District are open to the harvest of all non-spot shrimp species effective immediately, until further notice, except as provided for in this section:

(i) All waters of Catch Areas 23A-E, 23A-W, and 23A-C are closed.

(c) The shrimp accounting week is Monday through Sunday.

(d) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information.

(i) The number of pots being moved to a new area, and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(e) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(d) above.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B is open immediately, until further notice.

(3) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

(4) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. May 16, 2009:

WAC 220-52-05100L Puget Sound shrimp pot and beam trawl fishery—Season. (09-60)

**WSR 09-11-076  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-85—Filed May 15, 2009, 1:59 p.m., effective May 16, 2009]

Effective Date of Rule: May 16, 2009.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900B; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Spring chinook returns to the Cowlitz River have been strong to date. Through last week at least eight hundred spring chinook had been released into the lake. In addition to reintroduction efforts, hatchery fish are also available for harvest in the upper Cowlitz watershed. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 15, 2009.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900B Exceptions to statewide rules—Lake Scanewa.** Notwithstanding the provisions of WAC 232-28-619, effective May 16 through May 31, 2009, a person may fish for salmon in waters of Lake Scanewa (Cowlitz Falls Reservoir) from Cowlitz Falls Dam to the listed boundaries in the Cispus and Cowlitz arms. Daily limit 6 fish, of which 2 may be adults. Minimum size 8 inches. Release wild Chinook and wild coho.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective June 1, 2009:

WAC 232-28-61900B Exceptions to statewide rules—Lake Scanewa.

**WSR 09-11-106  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-91—Filed May 19, 2009, 1:40 p.m., effective May 19, 2009, 1:40 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500M; and amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The recreational shrimp quota in Marine Area 12 has been reached. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 19, 2009.

Philip Anderson  
Director

#### NEW SECTION

##### **WAC 220-56-32500N Shrimp—Areas and seasons.**

Notwithstanding the provisions of WAC 220-56-325, effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 7, 8, 9, 10, 11, 12 and the Discovery Bay Shrimp District.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-32500M      Shrimp—Areas and seasons  
(09-81)

(WSR 09-03-088) after discovering a typographical error in the permanent rule providing values to be used during the first half of 2009. The emergency rule's valuation for Ponderosa Pine Species Code PP Timber Quality Code 1 in Stumpage Value Area 5 was \$134, not the \$135 amount reflected in the permanent rule. The department is adopting a second emergency rule to provide the correct \$134 value through June 30, 2009. The department is currently in the rule-making process to adopt an amended permanent rule to provide valuations for the second half of 2009.

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 84.33.096.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The values used in this rule are used to determine tax liability for the period beginning January 1, 2009, and ending June 30, 2009. An emergency rule is needed to provide the correct valuation through June 30, 2009. The department is engaged in rule making to adopt an amended rule effective July 1, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 20, 2009.

Alan R. Lynn  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-12 issue of the Register.

#### **WSR 09-11-121**

##### **EMERGENCY RULES**

##### **DEPARTMENT OF REVENUE**

[Filed May 20, 2009, 9:15 a.m., effective May 20, 2009, 9:15 a.m.]

Effective Date of Rule: Immediately.

Purpose: WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. The department previously adopted an emergency rule